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APR 30 1999

Department of Water Resources

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE DISTRICT  
OF IDAHO, EASTERN DIVISION

UTAH CONSTRUCTION COMPANY,  
A corporation,

Plaintiff,

vs.

JOHN F. ABBOTT, et al.,

Defendants.

DENNIE V. DONAHUE, DENNIE H. DONAHUE,  
VICTOR A. JOHNSON, THOMAS C. PENCE, LOT  
SMITH and KARL SMITH, individually and  
in behalf of any and all other persons  
similarly interested, desiring to join  
in this petition and become parties  
thereto,

Petitioners.

No. \_\_\_\_\_

O R D E R

COPY

The above cause was heard upon Order to Show Cause issued by this Court upon the Petition of the above-named Petitioners on the 4th day of June, 1958, at Pocatello, Idaho. Petitioners appeared in person and by their attorneys, Sherman F. Furey, Jr. and Jack B. Furey; Big Lost River Irrigation District, Harry Pearson, Roy Merrill, Richard Rothwell and Willard Bell appeared in person and by their attorney, Robert M. Kerr, Jr.

Oral and documentary evidence was introduced and the matter having been submitted and the Court being fully advised,

IT IS ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. That the Big Lost River Irrigation District shall, as soon as receding water flow in the Big Lost River makes it practical to do so, and in any event, no later than the 20th day of July, 1958, remove from the "Back Channel" point of diversion from the Big Lost River situate in the Northeast Quarter of the Northeast Quarter of Section 5, Township 8 North, Range 22 E.B.M., the remnants of a certain concrete sill now partially blocking said diversion point; said work shall be done by the Big Lost River Irrigation District at its own expense.

2. Harry Pearson, also known as J. H. Pearson, is advised and ordered that diversion of water from the Big Lost River into the "Back Channel" under the Decree heretofore entered in this case shall

henceforth be in strict accordance with the provisions of said Decree, particularly paragraph 7 thereof, in that such diversion shall be at the point specified in said Decree, to-wit: The Northeast quarter of the Northeast quarter of Section 5, Township 8 North, Range 22 E.B.M. All other or alternate diversions into the "Back Channel" shall be dammed and closed by and at the expense of the Big Lost River Irrigation District as soon as receding flow of water in the Big Lost River makes it practical to do so but in any event, no later than the 20th day of July, 1958.

3. Within a reasonable time after the work referred to in paragraph 1 hereinabove is completed, those persons having the water rights from the Big Lost River with points of diversion from the "Back Channel" under the aforementioned Decree shall, at their own expense and under the direction of the proper representative of the State of Idaho, Department of Reclamation, install a suitable dam and controlling works for the regulation of the flow of the waters into the "Back Channel" at the point described in paragraph 2 hereinabove, such expense to be pro-rated among said persons according to the respective amount of water decreed to each in said Decree and they shall thereafter maintain said works at their own expense, such expense also to be pro-rated as described above.

4. The Big Lost River Irrigation District, its agents, employees, successors and assigns are enjoined and restrained, after said restoration of the decreed "Back Channel" diversion point and controlling works, from further tampering or interfering with said "Back Channel" diversion point and controlling works.

5. That the Big Lost River Irrigation District, Harry Pearson, also known as J. H. Pearson, Roy Merrill, Richard Rothwell and Willard Bell are not guilty of contempt of Court.

Dated this 16th day of June, 1958.

Fred M. Taylor, U. S. District Judge